

FIRST DIVISION

[G.R. No. 116863. February 12, 1998]

KENG HUA PAPER PRODUCTS CO. INC., *petitioner*, vs. COURT OF APPEALS; REGIONAL TRIAL COURT OF MANILA, BR. 21; and SEA-LAND SERVICE, INC., *respondents*.

DECISION

PANGANIBAN, J.:

What is the nature of a bill of lading? When does a bill of lading become binding on a consignee? Will an alleged overshipment justify the consignees refusal to receive the goods described in the bill of lading? When may interest be computed on unpaid demurrage charges?

Statement of the Case

These are the main questions raised in this petition assailing the Decision^[1] of the Court of Appeals^[2] promulgated on May 20, 1994 in C.A.-G.R. CV No. 29953 affirming *in toto* the decision^[3] dated September 28, 1990 in Civil Case No. 85-33269 of the Regional Trial Court of Manila, Branch 21. The dispositive portion of the said RTC decision reads:

WHEREFORE, the Court finds by preponderance of evidence that Plaintiff has proved its cause of action and right to relief. Accordingly, judgment is hereby rendered in favor of the Plaintiff and against Defendant, ordering the Defendant to pay plaintiff:

1. The sum of ₱67,340.00 as demurrage charges, with interest at the legal rate from the date of the extrajudicial demand until fully paid;
2. A sum equivalent to ten (10%) percent of the total amount due as Attorneys fees and litigation expenses.

Send copy to respective counsel of the parties.

SO ORDERED.^[4]

The Facts

The factual antecedents of this case as found by the Court of Appeals are as follows:

Plaintiff (herein private respondent), a shipping company, is a foreign corporation licensed to do business in the Philippines. On June 29, 1982, plaintiff received at its Hong Kong terminal a sealed container, Container No. SEAU 67523, containing seventy-six bales of unsorted waste paper for shipment to defendant (herein petitioner), Keng Hua Paper Products, Co. in Manila. A bill of lading (Exh. A) to cover the shipment was issued by the plaintiff.

On July 9, 1982, the shipment was discharged at the Manila International Container Port. Notices of arrival were transmitted to the defendant but the latter failed to discharge the shipment from the container during the free time period or grace period. The said shipment remained inside the plaintiffs container from the moment the free time period expired on July 29, 1982 until the time when the shipment was unloaded from the container on November 22, 1983, or a total of four hundred eighty-one (481) days. During the 481-day period, demurrage charges accrued. Within the same period, letters demanding payment were sent by the plaintiff to the defendant who, however, refused to settle its obligation which eventually amounted to P67,340.00. Numerous demands were made on the defendant but the obligation remained unpaid. Plaintiff thereafter commenced this civil action for collection and damages.

In its answer, defendant, by way of special and affirmative defense, alleged that it purchased fifty (50) tons of waste paper from the shipper in Hong Kong, Ho Kee Waste Paper, as manifested in Letter of Credit No. 824858 (Exh. 7. p. 110. Original Record) issued by Equitable Banking Corporation, with partial shipment permitted; that under the letter of credit, the remaining balance of the shipment was only ten (10) metric tons as shown in Invoice No. H-15/82 (Exh. 8, p. 111, Original Record); that the shipment plaintiff was asking defendant to accept was twenty (20) metric tons which is ten (10) metric tons more than the remaining balance; that if defendant were to accept the shipment, it would be violating Central Bank rules and regulations and custom and tariff laws; that plaintiff had no cause of action against the defendant because the latter did not hire the former to carry the merchandise; that the cause of action should be against the shipper which contracted the plaintiffs services and not against defendant; and that the defendant duly notified the plaintiff about the wrong shipment through a letter dated January 24, 1983 (Exh. D for plaintiff, Exh. 4 for defendant, p. 5. Folder of Exhibits).

As previously mentioned, the RTC found petitioner liable for demurrage, attorneys fees and expenses of litigation. The petitioner appealed to the Court of Appeals, arguing that the lower court erred in (1) awarding the sum of P67,340 in favor of the private respondent, (2) rejecting petitioners contention that there was overshipment, (3) ruling that petitioners recourse was against the shipper, and (4) computing legal interest from date of extrajudicial demand.^[6]

Respondent Court of Appeals denied the appeal and affirmed the lower courts decision *in toto*. In a subsequent resolution,^[6] it also denied the petitioners motion for reconsideration.

Hence, this petition for review.^[7]

The Issues

In its memorandum, petitioner submits the following issues:

- I. Whether or not petitioner had accepted the bill of lading;
- II. Whether or not the award of the sum of P67,340.00 to private respondent was proper;
- III. Whether or not petitioner was correct in not accepting the overshipment;
- IV. Whether or not the award of legal interest from the date of private respondents extrajudicial demand was proper;^[8]

In the main, the case revolves around the question of whether petitioner was bound by the bill of lading. We shall, thus, discuss the above four issues as they intertwine with this main question.

The Courts Ruling

The petition is partly meritorious. We affirm petitioners liability for demurrage, but modify the interest rate thereon.

Main Issue: *Liability Under the Bill of Lading*

A bill of lading serves two functions. *First*, it is a receipt for the goods shipped. *Second*, it is a contract by which three parties, namely, the shipper, the carrier, and the consignee undertake specific responsibilities and assume stipulated obligations.^[9] A bill of lading delivered and accepted constitutes the contract of carriage even though not signed,^[10] because the (a)ccptance of a paper containing the terms of a proposed contract generally constitutes an acceptance of the contract and of all of its terms and conditions of which the acceptor has actual or constructive notice.^[11] In a nutshell, the acceptance of a bill of lading by the shipper and the consignee, with full knowledge of its contents, gives rise to the presumption that the same was a perfected and binding contract.^[12]

In the case at bar, both lower courts held that the bill of lading was a valid and perfected contract between the shipper (Ho Kee), the consignee (Petitioner Keng Hua), and the carrier (Private Respondent Sea-Land). Section 17 of the bill of lading provided that the shipper and the consignee were liable for the payment of demurrage charges for the failure to discharge the containerized shipment beyond the grace period allowed by tariff rules. Applying said stipulation, both lower courts found petitioner liable. The aforementioned section of the bill of lading reads:

17. COOPERAGE FINES. The shipper and consignee shall be liable for, indemnify the carrier and ship and hold them harmless against, and the carrier shall have a lien on the goods for, all expenses and charges for mending cooperage, baling, repairing or reconditioning the goods, or the van, trailers or containers, and all expenses incurred in protecting, caring for or otherwise made for the benefit of the goods, whether the goods be damaged or not, and for any payment, expense, penalty fine, dues, duty, tax or impost, loss, damage, detention, demurrage, or liability of whatsoever nature, sustained or incurred by or levied upon the carrier or the ship in connection with the goods or by reason of the goods being or having been on board, or because of shippers failure to procure consular or other proper permits, certificates or any papers that may be required at any port or place or shippers failure to supply information or otherwise to comply with all laws, regulations and requirements of law in connection with the goods of from any other act or omission of the shipper or consignee: (Underscoring supplied.)

Petitioner contends, however, that it should not be bound by the bill of lading because it never gave its consent thereto. Although petitioner admits physical acceptance of the bill of lading, it argues that its subsequent actions belie the finding that it accepted the terms and conditions printed therein.^[13] Petitioner cites as support the Notice of Refused or On Hand Freight it received on November 2, 1982 from private respondent, which acknowledged that petitioner declined to accept the shipment. Petitioner adds that it sent a copy of the said notice to the shipper on December 29, 1982. Petitioner points to its January 24, 1983 letter to the private respondent, stressing that its acceptance of the bill of lading would be tantamount to an act of smuggling as the amount it had imported (with full documentary support) was only (at that time) for 10,000 kilograms and not for 20,313 kilograms as stated in the bill of lading and could lay them vulnerable to legal sanctions for violation of customs and tariff as well as Central Bank laws.^[14] Petitioner further argues that the demurrage was a consequence of the shippers mistake of shipping more than what was bought. The discrepancy in the amount of waste paper it actually purchased, as reflected in the invoice *vis--vis* the excess amount in the bill of lading, allegedly justifies its refusal to accept the shipment.^[15]

Petitioner Bound by the Bill of Lading

We are not persuaded. Petitioner admits that it received the bill of lading immediately after the arrival of the shipment^[16] on July 8, 1982.^[17] Having been afforded an opportunity to examine the said document, petitioner did not immediately object to or dissent from any term or stipulation therein. It was only six months later, on January 24, 1983, that petitioner sent a letter to private respondent saying that it could not accept the shipment. Petitioner's inaction for such a long period conveys the clear inference that it accepted the terms and conditions of the bill of lading. Moreover, said letter spoke only of petitioner's inability to use the delivery permit, *i.e.* to pick up the cargo, due to the shipper's failure to comply with the terms and conditions of the letter of credit, for which reason the bill of lading and other shipping documents were returned by the banks to the shipper.^[18] The letter merely proved petitioner's refusal to pick up the cargo, not its rejection of the bill of lading.

Petitioner's reliance on the Notice of Refused or On Hand Freight, as proof of its nonacceptance of the bill of lading, is of no consequence. Said notice was not written by petitioner; it was sent by private respondent to petitioner in November 1982, or four months after petitioner received the bill of lading. If the notice has any legal significance at all, it is to highlight petitioner's prolonged failure to object to the bill of lading. Contrary to petitioner's contention, the notice and the letter support not belie the findings of the two lower courts that the bill of lading was impliedly accepted by petitioner.

As aptly stated by Respondent Court of Appeals:

In the instant case, (herein petitioner) cannot and did not allege non-receipt of its copy of the bill of lading from the shipper. Hence, the terms and conditions as well as the various entries contained therein were brought to its knowledge. (Herein petitioner) accepted the bill of lading without interposing any objection as to its contents. This raises the presumption that (herein petitioner) agreed to the entries and stipulations imposed therein.

Moreover, it is puzzling that (herein petitioner) allowed months to pass, six (6) months to be exact, before notifying (herein private respondent) of the wrong shipment. It was only on January 24, 1983 that (herein petitioner) sent (herein private respondent) such a letter of notification (Exh D for plaintiff, Exh. 4 for defendant; p. 5, Folder of Exhibits). Thus, for the duration of those six months (herein private respondent never knew the reason for (herein petitioner's) refusal to discharge the shipment.

After accepting the bill of lading, receiving notices of arrival of the shipment, failing to object thereto, (herein petitioner) cannot now deny that it is bound by the terms in the bill of lading. If it did not intend to be bound, (herein petitioner) would not have waited for six months to lapse before finally bringing the matter to (herein private respondent's) attention. The most logical reaction in such a case would be to immediately verify the matter with the other parties involved. In this case, however, (herein petitioner) unreasonably detained (herein private respondent's) vessel to the latter's prejudice.^[19]

Petitioner's attempt to evade its obligation to receive the shipment on the pretext that this may cause it to violate customs, tariff and central bank laws must likewise fail. Mere apprehension of violating said laws, without a clear demonstration that taking delivery of the shipment has become legally impossible,^[20] cannot defeat the petitioner's contractual obligation and liability under the bill of lading.

In any event, the issue of whether petitioner accepted the bill of lading was raised for the first time only in petitioner's memorandum before this Court. Clearly, we cannot now entertain an issue raised for the very first time on appeal, in deference to the well-settled doctrine that (a)n issue raised for the first time on appeal and not raised timely in the proceedings in the lower court is barred by estoppel. Questions raised on appeal must be within the issues framed by the parties and, consequently, issues not raised in the trial court cannot be raised for the first time on appeal.^[21]

In the case at bar, the prolonged failure of petitioner to receive and discharge the cargo from the private respondent's vessel constitutes a violation of the terms of the bill of lading. It should thus be

liable for demurrage to the former.

In *The Apollon*,^[22] Justice Story made the following relevant comment on the nature of demurrage:

In truth, demurrage is merely an allowance or compensation for the delay or detention of a vessel. It is often a matter of contract, but not necessarily so. The very circumstance that in ordinary commercial voyages, a particular sum is deemed by the parties a fair compensation for delays, is the very reason why it is, and ought to be, adopted as a measure of compensation, in cases ex delicto. What fairer rule can be adopted than that which founds itself upon mercantile usage as to indemnity, and fixes a recompense upon the deliberate consideration of all the circumstances attending the usual earnings and expenditures in common voyages? It appears to us that an allowance, by way of demurrage, is the true measure of damages in all cases of mere detention, for that allowance has reference to the ships expenses, wear and tear, and common employment.^[23]

Amount of Demurrage Charges

Petitioner argues that it is not obligated to pay any demurrage charges because, prior to the filing of the complaint, private respondent made no demand for the sum of ₱67,340. Moreover, private respondents loss and prevention manager, Loi Gillera, demanded ₱50,260, but its counsel, Sofronio Larcia, subsequently asked for a different amount of ₱37,800.

Petitioners position is puerile. The amount of demurrage charges in the sum of ₱67,340 is a factual conclusion of the trial court that was affirmed by the Court of Appeals and, thus, binding on this Court.^[24] Besides such factual finding is supported by the extant evidence.^[25] The apparent discrepancy was a result of the variance of the dates when the two demands were made. Necessarily, the longer the cargo remained unclaimed, the higher the demurrage. Thus, while in his letter dated April 24, 1983,^[26] private respondents counsel demanded payment of only ₱37,800, the additional demurrage incurred by petitioner due to its continued refusal to receive delivery of the cargo ballooned to ₱67,340 by November 22, 1983. The testimony of Counsel Sofronio Larcia as regards said letter of April 24, 1983 elucidates, viz:

Q Now, after you sent this letter, do you know what happened?

A Defendant continued to refuse to take delivery of the shipment and the shipment stayed at the port for a longer period.

Q So, what happened to the shipment?

A The shipment incurred additional demurrage charges which amounted to ₱67,340.00 as of November 22, 1983 or more than a year after - almost a year after the shipment arrived at the port.

Q So, what did you do?

A We requested our collection agency to pursue the collection of this amount.^[27]

Bill of Lading Separate from Other Letter of Credit Arrangements

In a letter of credit, there are three distinct and independent contracts: (1) the contract of sale between the buyer and the seller, (2) the contract of the buyer with the issuing bank, and (3) the letter of credit proper in which the bank promises to pay the seller pursuant to the terms and conditions stated therein. Few things are more clearly settled in law than that the three contracts which make up the letter of credit arrangement are to be maintained in a state of perpetual separation.^[28] A transaction involving the purchase of goods may also require, apart from a letter of credit, a contract of transportation specially when the seller and the buyer are not in the same locale or country, and the goods purchased have to be transported to the latter.

Hence, the contract of carriage, as stipulated in the bill of lading in the present case, must be treated independently of the contract of sale between the seller and the buyer, and the contract for the issuance of a letter of credit between the buyer and the issuing bank. Any discrepancy between the amount of the goods described in the commercial invoice in the contract of sale and the amount allowed in the letter of credit will not affect the validity and enforceability of the contract of carriage as embodied in the bill of lading. As the bank cannot be expected to look beyond the documents presented to it by the seller pursuant to the letter of credit,^[29] neither can the carrier be expected to go beyond the representations of the shipper in the bill of lading and to verify their accuracy *vis--vis* the commercial invoice and the letter of credit. Thus, the discrepancy between the amount of goods indicated in the invoice and the amount in the bill of lading cannot negate petitioners obligation to private respondent arising from the contract of transportation. Furthermore, private respondent, as carrier, had no knowledge of the contents of the container. The contract of carriage was under the arrangement known as Shippers Load And Count, and the shipper was solely responsible for the loading of the container while the carrier was oblivious to the contents of the shipment. Petitioners remedy in case of overshipment lies against the seller/shipper, not against the carrier.

Payment of Interest

Petitioner posits that it first knew of the demurrage claim of ₱67,340 only when it received, by summons, private respondents complaint. Hence, interest may not be allowed to run from the date of private respondents extrajudicial demands on March 8, 1983 for ₱50,260 or on April 24, 1983 for ₱37,800, considering that, in both cases, there was no demand for interest.^[30] We agree.

Jurisprudence teaches us:

2. When an obligation, *not constituting a loan or forbearance of money*, is breached, an interest on the amount of damages awarded may be imposed at the *discretion* of the court at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, *where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially* (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). *The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.*

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.^[31]

The case before us involves an obligation not arising from a loan or forbearance of money; thus, pursuant to Article 2209 of the Civil Code, the applicable interest rate is six percent per annum. Since the bill of lading did not specify the amount of demurrage, and the sum claimed by private respondent increased as the days went by, the total amount demanded cannot be deemed to have been established with reasonable certainty until the trial court rendered its judgment. Indeed, (u)nliquidated damages or claims, it is said, are those which are not or cannot be known until definitely ascertained, assessed and determined by the courts after presentation of proof.^[32] Consequently, the legal interest rate is six percent, to be computed from September 28, 1990, the date of the trial courts decision. And in accordance with *Philippine Natonal Bank*^[33] and *Eastern Shipping*,^[34] the rate of twelve percent per annum shall be charged on the total then outstanding, from the time the judgment becomes final and executory until its satisfaction.

Finally, the Court notes that the matter of attorneys fees was taken up only in the dispositive portion of the trial courts decision. This falls short of the settled requirement that the text of the decision should state the reason for the award of attorneys fees, for without such justification, its award would be a conclusion without a premise, its basis being improperly left to speculation and conjecture.^[35]

WHEREFORE, the assailed Decision is hereby *AFFIRMED* with the *MODIFICATION* that the legal interest of six percent per annum shall be computed from September 28, 1990 until its full payment before finality of judgment. The rate of interest shall be adjusted to twelve percent per annum, computed from the time said judgment became final and executory until full satisfaction. The award of attorneys fees is *DELETED*.

SO ORDERED.

Davide, Jr., (Chairman), Bellosillo, Vitug, and Quisumbing, JJ., concur.

^[1] *Rollo*, pp. 20-32.

^[2] Tenth Division, composed of J. Fermin A. Martin, Jr., *ponente*; and JJ. Emeterio C. Cui (chairman) and Eugenio S. Labitoria, concurring.

^[3] *Rollo*, pp. 15-18. The RTC decision was penned by Judge Lourdes K. Tayao-Jaguros, who was later appointed to the Court of Appeals, from where she has now retired.

^[4] *Ibid.*, pp. 17-18.

^[5] Petitioners brief before the Court of Appeals, pp. 5-8; record of the Court of Appeals, pp. 21-24.

^[6] *Rollo*, p. 35.

^[7] The case was deemed submitted for resolution on June 3, 1996 upon this Courts receipt of petitioners memorandum.

^[8] Petitioners memorandum, p. 4; *Rollo*, p. 87.

^[9] Magellan Mftg. Marketing Corp. vs. Court of Appeals, 201 SCRA 102, 110, August 22, 1991, per Regalado, J.

^[10] 13 C.J.S. 239. See also Pan American World Airways, Inc. vs. IAC, 164 SCRA 268, 275, August 11, 1988; citing Ong Yiu vs. Court of Appeals, 91 SCRA 223, 231, June 29, 1979.

^[11] 17 C.J.S. 672.

^[12] Saludo, Jr. vs. Court of Appeals, 207 SCRA 498, 527-528, March 23, 1992.

^[13] *Ibid.*, p. 5, *Rollo*, p. 88.

^[14] *Ibid.*, pp. 5-6; *Rollo*, pp. 88-89.

^[15] Petitioners memorandum, pp. 9-10; *Rollo*, pp. 92-93.

^[16] See petitioners motion for reconsideration before the Court of Appeals, p. 2; record of the Court of Appeals, p. 81.

^[17] See Exhibit B, Folder of Exhibits, p. 2.

^[18] See Exhibit D, Folder of Exhibits, p. 5.

^[19] Decision of the Court of Appeals, pp. 4-5; *Rollo*, pp. 23-24.

^[20] Art. 1266 of the Civil Code provides:

Art. 1266. The debtor in obligations to do shall also be released when the prestation becomes legally or physically impossible without the fault of the obligor.

^[21] Sanchez vs. Court of Appeals, G.R. No. 108947, p. 28, September 29, 1997, per Panganiban, J.; quoting Caltex (Philippines), Inc. vs. Court of Appeals, 212 SCRA 448, 461, August 10, 1992, per Regalado, J.

^[22] 22 U.S. (9 Wheat.) 362; 6 L. Ed. 111 (1824).

^[23] 22 U.S. at 378.

^[24] Fuentes vs. Court of Appeals, G.R. No. 109849, p. 9, February 26, 1997, per Panganiban, J.

^[25] See computation of CBCS Guaranteed Fast Collection Services, Exh. F-1, Folder of Exhibits, p. 8.

^[26] Exh. E, Folder of Exhibits, p. 6.

^[27] TSN, pp. 5-6, August 31, 1988.

^[28] Gilmore, Grant and Black, Charles, *The Law of Admiralty*, p. 120, 2nd ed. (1975).

^[29] See Irrevocable Letter of Credit No. 82-1858, rollo, p. 11.

^[30] Petitioners memorandum, p. 10; rollo, p. 93.

[\[31\]](#) Eastern Shipping Lines, Inc. vs. Court of Appeals, 234 SCRA 88, July 12, 1994, per Vitug, *J.* See *also* Philippine National Bank vs. Court of Appeals, 263 SCRA 766, 770, October 30, 1996.

[\[32\]](#) Central Azucera de Bais vs. Court of Appeals, 188 SCRA 328, 339, August 3, 1990, per Regalado, *J.*

[\[33\]](#) 263 SCRA at 772.

[\[34\]](#) 234 SCRA at 97.

[\[35\]](#) Francel Realty Corporation vs. Court of Appeals, 252 SCRA 127, 134, January 22, 1996, per Mendoza, *J.*; citing Buan vs. Camaganacan, 16 SCRA 321, February 28, 1966.